

IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

RSA No. 47 of 1996.

Judgment reserved on 4.7.2007.

Date of decision 18th July, 2007.

Chuhar Singh

...Appellant.

Versus

Gandharb Singh & others

....Respondents.

Coram

The Hon'ble Mr. Justice Dev Darshan Sud, J.

Whether approved for reporting?¹

For the appellant: Mr. Baldev Singh, Advocate.

For the Respondents: Mr. Ajay Sharma, Advocate.

For respondents 2 to 4 Mr. Onkar Jairath, Advocate.

Dev Darshan Sud, J.

This appeal has been preferred against the judgment and decree of the learned District Judge, Una whereby the appeal preferred by the appellant against the judgment and decree of the learned trial Court has been dismissed.

Brief facts of the case are that the appellant herein was the defendant before the learned trial Court.

¹ *Whether reports of Local Papers may be allowed to see the judgment?*

A suit for declaration was preferred by the plaintiffs claiming ownership of the land as described in the plaint. The learned trial Court passed a decree declaring the plaintiffs as owners in possession of the suit land and a decree annulling the entry in Khasra Girdawari with effect from Rabi 1981 in the column of cultivation in the name of the defendant-appellant and his father. A decree for permanent prohibitory injunction restraining the defendants was also passed.

The learned District Judge decided the appeal against the appellant.

I have heard the learned counsel for the parties.

This appeal was admitted on substantial questions of law Nos. 1,2,5 and 6 filed with the grounds of appeal. For purposes of the present appeal, it is only question No. 6 which is being decided. This question is as to whether the appellate Court was in error in ignoring the application under Order 26 Rule 9 of the Code of Civil Procedure for appointment of a local commissioner. A perusal of the record shows that on 7.5.1994, an application under Order 26 Rule 9 read with Section 151 of the Code of Civil Procedure was filed by the appellant

herein with a prayer that a local commissioner may be appointed, or the Court itself may verify the factum of construction having been made on the abadi land, which according to the petitioner was the subject matter of dispute. On 6.10.1994, the District Judge passed the following order:

"6.10.1994. Present: Sh. K.S.Thakur,
Advocate for the
appellant.

Mr. M.L.Sharma,
Advocate for the
Respondent.

Heard on the
application U.O. 26 Rule 9 CPC. Since the
spot is inspected for the appreciation of
the evidence on record, the spot shall be
inspected by the court after hearing the
arguments on merits, if it thinks proper.
Otherwise the application shall be deemed
to be dismissed. To come up for arguments
on merits on 20.12.1994."

It is thus clear from the order that the spot was inspected for purposes of appreciation of the evidence on record. Further observation of the Court is that the spot shall be inspected again after hearing the arguments if it is thought proper, otherwise the application shall be deemed to be dismissed. While passing the impugned

judgment, the learned District Judge has nowhere considered the fact as to whether it was necessary for spot inspection or whether there was any necessity for such inspection in order to enable it to come to a proper conclusion. Having held positively that such inspection would be carried out if required, it was incumbent upon the learned District Judge to have considered this fact at the time when the appeal was heard. This having not been done, the matter cannot be said to have been decided in accordance with law. Either the order passed by the Court should have been modified or withdrawn in accordance with law or carried to its logical conclusion both for purposes of appreciation of evidence or inspection if required to assist the Court in coming to a conclusion that the spot inspection was necessary. The learned District Judge has clearly erred in ignoring the order passed by the Court on 6.10.1994. This question is answered in favour of the appellant and against the respondents.

The matter is remanded to the learned District Judge for decision afresh in accordance with law. He will consider order dated 6.10.1994 and proceed afresh with matter. This Court has not given a finding on any of the other points on merit as the matter is being remanded.

Parties to appear before the learned District Judge on 28th September, 2007. The record of the case be sent back immediately. The learned District Judge is directed to proceed with the matter with utmost expedition, considering that the suit out of which the appeal arises was filed in 1989. The appeal is disposed of accordingly. There shall be no order as to costs. All pending application(s) shall stand disposed of.

July 18, 2007. (PC)

(Dev Darshan Sud), J.